

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Appeal No. 691-SB of 1998

Date of decision: 23rd February, 2010

Taqdir Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mrs. Baljit Kaur Mann, Advocate for the appellant.
Ms. Hemlata Balhara, Assistant Advocate General, Haryana
for the State.

KANWALJIT SINGH AHLUWALIA, J.

Taqdir Singh son of Lehri Singh has preferred the present appeal and has challenged the judgment of conviction and order of sentence dated 30th July, 1998, whereby he was held guilty of offence under Section 452 and 376 IPC. The trial Court had sentenced the appellant under Section 452 IPC to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo rigorous imprisonment for one year. The appellant was further sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo rigorous imprisonment for 1 ½ years under Section 376 IPC.

ASI Devi Dutt PW-10 of Police Station Sahlawas was present at Jhajjar, when the prosecutrix PW-1 (whose name has been withheld to protect her identity) along with her husband Nahnu Ram PW-5 appeared and made statement Ex.PA, on the basis of which FIR No.32 dated

07.05.1996 was registered at Police Station Sahlawas. The prosecutrix stated that her parents belong to Dadri Toe. About 11 months before the occurrence, she was married with Nahnu Ram. She was staying in her matrimonial home at village Chandol. She had set up a separate residence with her husband three months before the occurrence and her in-laws were residing in another house. On 3rd May, 1996 at about 4.00 p.m. her husband had gone to village Bhakli to do the work of Halwai (sweet maker) in a marriage and she was alone at her house. At about 10.00 p.m., she went to sleep in the courtyard after bolting the door of her house. She had retired to her bed after taking her meals. At about 11.00 p.m., she felt that somebody had put his hands on her mouth. At that time, the present appellant, who was standing there, bent upon her and had gagged her mouth. At that time, the appellant was wearing underwear only. When the prosecutrix tried to remove the hand of appellant from her mouth, he closed the mouth of the prosecutrix with a cloth and also tied both of her hands with Charpai (cot) with a cloth. Due to scuffle, bangles in both the hands of the prosecutrix and the ring in her little finger were broken. Due to deformity of one knee, the prosecutrix could not provide resistance. The accused had broken the string of Salwar of the prosecutrix, removed her panty and forcibly committed sexual intercourse upon her. After the occurrence, the accused untied the hands of the prosecutrix, removed the cloth from her face and ran away from the spot. In the next morning, the prosecutrix reached the house of her mother-in-law Sunehri and narrated the entire incident to her. Thereupon, a man was sent to village Bhakli to call the husband of the prosecutrix. Feeling harm to her reputation in the society, the prosecutrix remained at her house, since the entire village knew about the incident and on the persuasion of the people that the guilty should be punished, the prosecutrix complainant along with her husband came forward to lodge the matter with the police.

She was going to the Police Station to lodge the report when the police officials met her and she got her statement recorded. It was further stated that Taqdir had left his house from the day of incident and was not available.

In the present case, occurrence had taken place on 3rd May, 1996 at about 11.00 p.m. The prosecutrix had made statement Ex.PA to ASI Devi Dutt PW-10 on 7th May, 1996 at 1.20 p.m. Case was registered at Police Station Sahlawas on 7th May, 1996 at 3.30 p.m.

The above said FIR was investigated and report under Section 173 Cr.P.C. was submitted against the accused appellant.

The case, along with the accused, was committed to the Court of Sessions Judge, Rohtak and was entrusted for trial to the Court of Additional Sessions Judge, Rohtak. On 19th September, 1996, the trial Judge charged the appellant for offence under Section 452 and 376 IPC. The charge stated that on 3rd May, 1996 at about 11.00 p.m. in the area of village Chandol, the appellant committed house-trespass by entering the house of the prosecutrix, used as human dwelling, having made preparation to wrongfully restrain the prosecutrix and thereby committed an offence punishable under Section 452 IPC. It was further stated that on the same day, time and place, he had committed offence of rape punishable under Section 376 IPC.

The appellant pleaded not guilty and claimed trial.

Prosecutrix appeared as PW-1 and reiterated as to what was stated in her statement Ex.PA, contents of which have been noticed above. She further stated that Taqdir was her neighbour. In cross examination, this witness admitted that her mother had got a case registered against Hari Singh and Smt. Bala wife of Hari Singh on the accusation that Hari Singh had given a kick blow in the stomach of mother of the prosecutrix, due to which she got aborted and the child died. She

denied the suggestion that earlier her mother had compromised the matter after acceptance of money. This witness further stated that when the accused appeared near her cot, he was having a 5 feet long Parna (cloth) in his hand. She further stated that the elder brother of her husband was sent to relay the information to her husband. She further deposed that due to breakage of her bangles at the time of incident, she had sustained injuries on her arm's skin but the injuries did not bleed. It was stated that her underwear and Salwar were stained with semen. The police had taken into possession the broken bangles, ring and clothes from the house of prosecutrix. She denied the suggestion that she had lodged false case against the accused to save Bansi son of Sube, a driver and accused in a case under Section 377 IPC. Bansi is stated to be Ustad (teacher) of husband of the prosecutrix as he allegedly used to impart lessons to him in driving. She further stated that it was not in her knowledge that Bansi was named as accused for having committed unnatural intercourse with son of the accused.

Head Constable Bharat Singh PW-2, Constable Nafe Singh PW-3 and Constable Krishan Kumar PW-4 tendered their affidavits Ex.PB, PC and PD respectively to prove link evidence.

Nahnu Ram, husband of the prosecutrix appeared as PW-5. He stated that on 3rd May, 1996, he had gone to village Bhakli to do the job of Halwai (sweet maker). On 4th May, 1996 at about 4.00 p.m., he received the information through his cousin Ram Kishan and came back to his house at 6.30 p.m. He divulged the occurrence to the Sarpanch and other respectables of the village and on their advice that the culprit should be punished, he along with his wife proceeded to the Police Station, when on the way police party met him and his wife got recorded the statement to the police. In cross examination, this witness stated that the broken

bangles were put in a match box by a Sub Inspector. He admitted that his father and the father of accused Taqdir were real brothers.

Dr.Aruna Sangwan, Medical Officer, Community Health Centre, Jhajjar PW-6 medico legally examined the prosecutrix on 7th May, 1996 at 3.45 p.m. No external mark of injury was found, except that there was an old fracture on the right thigh with shortening. In examination of external organs, a whitish discharge was found present in the vagina. Old tags of hymen were present. Vagina admitted two fingers. Vaginal swabs from posterior fornix were taken. Sample of the pubic hair of the prosecutrix was also taken. This witness stated that since the prosecutrix had changed her clothes, they were not taken into possession. This witness had not ruled out the possibility of prosecutrix having sexual intercourse. In cross examination, this witness stated that there was no external mark of injury on the body of the prosecutrix and there was no semen mark on her thigh.

SI Jagdish Chander PW-7 had prepared the report under Section 173 Cr.P.C.

ASI Sumer Singh PW-8 proved registration of the formal FIR Ex.PA/1 on receipt of ruqa Ex.PA.

Dr.Ram Kumar, Medical Officer PW-9 had examined the accused appellant and had opined that there was nothing to suggest that the accused was not fit to perform sexual intercourse.

ASI Devi Dutt PW-10 was the Investigating Officer. He deposed regarding various facets of the investigation. This witness further stated that on 13th May, 1996, he had arrested the accused. This witness stated that when he had inspected the spot, he had not found any broken bangles. This witness admitted that the house of the accused and the door of house of the prosecutrix open in the same street. He stated that the

boundary wall between the houses of the accused and that of the prosecutrix was having a height of three feet.

Sunil Kumar Bhatnagar, Draftsman PW-11 had prepared the scaled site plan of the spot Ex.PO.

Sunehri Devi, mother-in-law of the prosecutrix was given up as won-over.

The Public Prosecutor had placed on record report Ex.PK of the Forensic Science Laboratory, Madhuban, Haryana, wherein it was stated that human semen was detected on multicoloured terrycot Salwar and on yellow/brown nylon underwear.

Thereafter, prosecution closed its evidence. Statement of the accused under Section 313 Cr.P.C. was recorded and all incriminating circumstances were put to him. He denied the same and projected the following version in his statement:

“Yes. I am innocent. I have been falsely implicated in this case only to save Banshi s/o Sube Singh who is friend and Guru of the husband of the prosecutrix in motor driving, as there was case against him under Section 377 IPC and in charge of P.S. Sahalwas Jagdish Chander was relative of my village and interested in compromise in the case under Section 377 IPC. Both parties were apprehended from the village on the same day but they were sent to home in evening and I was kept in Thana more than 5 and 6 days.”

In defence, Jagminder Singh Draftsman was examined as DW-1. He proved the site plan Ex.D1. This witness stated that the door of the house of accused faces the street towards the Northern side of his house. Thereafter, there is a small turning at the northern-western corner of the house of accused and thereafter, the street goes to the door of the house of prosecutrix.

Mauji Ram DW-2 stated that as a Sarpanch, he had not heard of any incident. This witness stated that it was not in his knowledge that the accused and cousin of Nahnu Ram were challaned under Section 107/151 Cr.P.C. This witness further stated that he had only heard about a family dispute.

Het Ram DW-3 stated that he had learnt that Taqdir had been challaned under Section 107/151 Cr.P.C. This witness further stated that he had heard nothing about the accused. In cross examination, this witness stated that there was no case registered against the accused under Section 107/151 Cr.P.C.

Sabha Chand Chaukidar DW-4 stated that the circumstances regarding arrest of the accused were not in his knowledge.

I have heard counsel for the parties. Mrs. Baljit Kaur Mann, Advocate appearing for the appellant, has stated that the prosecutrix was aged about 19-20 years. It is further submitted that at the time of incident, prosecutrix was 21 weeks' pregnant. It is submitted that according to the prosecution story, accused came to the house of the prosecutrix at 11.00 p.m. He had tied the hands of the prosecutrix with a cloth and had allegedly gagged her mouth with the cloth. It is contended that according to the prosecutrix, the accused while leaving, had untied her hands and had removed the cloth from her mouth, still the prosecutrix had raised no noise to attract anybody and narrate the incident. These circumstances according to the counsel, make the version projected by the prosecutrix unnatural, improbable and unconvincing. It is urged that this Court should appreciate the arguments in light of the fact that for four days, the prosecutrix had not reported the matter to the police. The occurrence had taken place on 3rd May, 1996, whereas, the report was lodged with the police on 7th May, 1996. Counsel has further stated that according to the prosecutrix, her bangles and ring of little finger were broken at the spot

and the same were taken into possession by the Investigating Officer. This fact was also reiterated by Nahna Ram PW-5, husband of the prosecutrix. But ASI Devi Dutt PW-10 had stated in categorical terms that no bangles were taken into possession and the same were not found at the spot. This according to the counsel, is a material contradiction between the testimony of three prime witnesses examined by the prosecution. Furthermore, it was averred that according to the prosecutrix, her bangles had caused injuries on her arms but no such injury was found in the medico legal report, therefore, the medical evidence in no way corroborates the ocular version. It is submitted that vaginal swabs were sent to the laboratory but no semen was found. There were no external or internal marks of injury suffered by the prosecutrix. It is further submitted that Sunehri Devi, mother-in-law of the prosecutrix, to whom the occurrence was narrated for the first time, was not examined by the prosecution. Even brother of husband of the prosecutrix, who had relayed the information to Nahnu Ram, husband of the prosecutrix, at the place of his avocation, was not examined.

Adding force to the above stated arguments, it is urged that the suggestions given by the accused and the version narrated by him in his statement recorded under Section 313 Cr.P.C. assumes importance, as present and the former Sarpanch of the village had appeared in defence as DW-2 and DW-3 respectively and stated that no occurrence had taken place. This according to the counsel, belies the explanation furnished by the prosecutrix to explain the delay that the villagers had prompted her to lodge the report so that the culprit should be punished.

Counsel for the State has urged that the testimony of prosecutrix aspires confidence and can be relied upon without any corroboration.

There are certain features of this case, which compel this Court to arrive at a conclusion that the testimony of the prosecutrix can be relied upon without any corroboration:

- (a) Father of the accused and the father of husband of the prosecutrix were brothers, therefore, the accused and husband of the prosecutrix are closely related.
- (b) On the day of occurrence, in connection with his avocation, husband of the prosecutrix had gone out of the village and the prosecutrix was alone at her house when in the night accused had trespassed into her house.
- (c) The version projected regarding the alleged inimical relations has not been proved by the defence. No copy of the FIR, report under Section 173 Cr.P.C. or the Court proceedings has been placed on record to prove that the alleged friend (Ustad) of husband of the prosecutrix was involved in a case under Section 377 Cr.P.C. Furthermore, it is difficult to believe that the prosecutrix and her husband will level false allegations of rape to absolve a friend of the husband, especially when the accused is closely related to them. Thus, except a bald suggestion and a version under Section 313 Cr.P.C., nothing has been brought on record to corroborate the same. The suggestion propounded by the defence and the version given under Section 313 Cr.P.C. are to be rejected, being not probable. Once this Court has held that the relations between the parties were normal, then it is difficult to believe that the

prosecutrix will put reputation of her family at stake by leveling false allegations.

- (d) It is not the case of the accused that it is a case of consent.

The arguments raised by the defence counsel that there was a delay of four days in lodging the report to the police; no injury on the person of the prosecutrix was found in the medical evidence, therefore, she had not offered any resistance; the bangles were not recovered and that the defence witnesses have belied the version of the prosecutrix, are to be rejected in the context of circumstances enumerated above.

The Hon'ble Apex Court, in '**State of Maharashtra v. Chandraprakash Kewalchand Jain**' (1990) 1 SCC 550, observed as under:

“15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony ? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix ? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section

133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be

infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

“It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary.”

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.

17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our

standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.”

In the light of the observations made by the Hon'ble Apex Court above, this Court cannot ignore that on the Salwar and underwear of the prosecutrix, human semen was detected. It is not necessary that in every case, vaginal swabs must contain semen. Sometimes the accused may discharge the semen outside the vagina. No question to this effect was asked to the prosecutrix. Furthermore, it was stated by the prosecutrix that her hands were tied and her legs were weak, therefore, she could not offer resistance to the accused, who was a well built young man. Non-examination of Sunehri Devi, mother-in-law of the prosecutrix, and elder brother (cousin) (Jeth) of husband of the prosecutrix, is also of no consequence as the testimony of the prosecutrix corroborated by her husband is sufficient for reliance, as the same inspires confidence.

In '**Gita Ram v. State of H.P.**' 2002 Cri.L.J.3832, Himachal Pradesh High Court has held that the delay in lodging of the report is of no consequence as victim of sexual assault face a lot of difficulty to come forward to depose against the accused, as the reputation of family of the prosecutrix is at stake. Relying upon the judgment rendered in '**State of**

Punjab v. Gurmit Singh' (1996) 2 SCC 384, Himachal Pradesh High

Court observed as under:

"22. In State of Punjab v. Gurmit Singh , (1996) 2 SCC 384 : (1996 Cri LJ 1728), their Lordships took note of the existing rate of crime against women and held : (SCC p 403, para 21) : (at Pp 1739-40, Para 20 of Cri LJ).

'21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violate the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'

Referring to an earlier judgment in State of Maharashtra v. Chandraprakash Kewalchand Jain (1990) 1 SCC 550 : (1990 Cri LJ 889), the Supreme Court in Gurmit Singh case (1996 (2) SCC 384 : 1996 Cri LJ 1728) held : (SCC Pp 395-97, paras 8-9) : (at p 1735, Para 7 of Cri LJ).

'The Courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion ? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of

sexual assault stands almost on a par with the evidence of a injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, as considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Interference have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even, if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as deprobable. In State of Maharashtra v. Chandraprakash Kewalchand Jain (1990 (1) SCC 550 : 1990 Cri LJ 889), Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words : (SCC p 559, para 16 : (at Pp 894-95, Para 16 of Cri LJ).

'A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the

same weight as is attached to an injured in cases of physical violence. The same degree of care of and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which required it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.'

We are in respectful agreement with the above exposition of law. In the instant case our careful analysis of the statement of the prosecutrix has created an impression on our minds that she is a reliable and truthful witness. Her testimony suffers from no infirmity or blemish whatsoever. We have no hesitation in acting upon her testimony alone without looking for any corroboration. However, in this case there is

ample corroboration available on the record to lend further credence to the testimony of the prosecutrix.

23. In the light of the above said ratio of the decision of the Apex Court, I find that in the case on hand the testimony of the prosecutrix discussed hereinabove suffers from no infirmity and she is a reliable and truthful witness. There is ample corroboration available on the record to lend further credence to the testimony of the prosecutrix in the form of the deposition of PW 2 to whom the prosecutrix had narrated the incident in the evening on the same day and she disclosed the occurrence to her husband immediately after he returned from attending the fair. Medical evidence is not of much relevance for the reason that prosecutrix was examined by Dr. Shyam after about 24 days from the alleged day of occurrence and further because she is a married woman and was habitual of sexual inter course.”

In the present case, the prosecutrix was medico legally examined after four days of the occurrence.

In ‘**Karnel Singh v. State of M.P.**’ 1995(3) RCR (Criminal) 526, it was observed as under:

“7. The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society’s attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathize with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.”

In view of the observations of the Hon’ble Apex Court, it is necessary to notice the judgments relied by the counsel for the appellant. Reliance has been placed upon ‘**Tameezuddin @ Tammu v. State of**

(NCT) of Delhi' 2009(4) RCR (Criminal) 345. A perusal of the said judgment reveals that the same is not attracted on the facts of the present case. Their Lordships of Hon'ble Apex Court took into consideration the testimony of PW-1 prosecutrix where she told the appellant that everything was forgiven and forgotten. Another judgment relied by the counsel for the appellant rendered in '**State of Haryana v. Dilawar**' 2009(3) RCR (Criminal) 2001 is also not attracted, as the Court has given credence to the fact that Zile Singh PW-6 in that case had not supported the prosecution. Similarly '**Kishan v. State of Haryana**' 2009(3) RCR (Criminal) 480, a judgment rendered by a Single Bench of this Court is also not attracted on the facts of the present case, as it was held that the evidence of the prosecutrix was neither reliable nor trustworthy. It was further held that each case depends on its own facts and circumstances. Another judgment cited by counsel for the appellant, rendered by a Division Bench of Hon'ble Apex Court in '**Pandurang Sitaram Bhagwat v. State of Maharashtra**' 2005(1) RCR (Criminal) 858 also states that each case is to be determined on the factual matrix of that case.

This Court has already held that testimony of the prosecutrix aspires confidence, therefore, in view of the discussion made above and the observations made by the Hon'ble Apex Court in the judgments relied, this Court is of the opinion that present appeal is devoid of any merit and is thus, liable to be dismissed.

Counsel for the appellant has relied upon another judgment of this Court rendered in '**Balkar Singh v. State of Haryana**' 2007(4) RCR (Criminal) 597 to contend that taking into consideration long pendency of the trial, sentence awarded upon the appellant should be reduced to the minimum period prescribed.

This Court is of the view that there are no special or adequate reasons to reduce the sentence awarded upon the accused appellant. It is

not a case where the accused and the prosecutrix had eloped together. It is also not a case of love affair, where because the age of the prosecutrix was less therefore, the sentence should be reduced. In the present case, the appellant had committed offence of rape to satisfy his lust, therefore, there is no scope for reduction in sentence awarded to the accused appellant. Hence, this prayer is also declined.

Dismissed.

[KANWALJIT SINGH AHLUWALIA]
JUDGE

February 23, 2010

rps